



## The Fallacy of Non-Interference: The Poor Panopticon and Equality of Opportunity

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# The Fallacy of Non-Interference: The Poor Panopticon and Equality of Opportunity

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In the long and continuing debate concerning Bentham's status as a 'liberal', the closely related projects of the Panopticon Penitentiary and the National Charity Company have consistently been advanced as the conclusive evidence of Bentham's underlying authoritarianism.<sup>1</sup> This fact is unsurprising: for in relation to both projects Bentham not only explicitly writes in terms of control, of imposing on persons behaviours and, by repetition thereof, ultimately character traits, which they do not wish to acquire, albeit in the alleged interests of those persons, as well as those of society at large, but appears to revel in the exercise of 'plastic power' in a manner which is repellent, and does appear to trample on human dignity. Janet Semple recognised as much in her study of the Panopticon.<sup>2</sup> However, she was able to produce a dispassionate assessment of that ambiguous institution, and to mount a sophisticated defence of Panopticism, which rested ultimately on the recognition that, quite simply, a prison is either a mechanism of control or it is nothing.

With reference to the poor law writings, Bentham's explicit design of using the assemblage of management rules devised for the Poor Panopticon, and in particular the Inspection Architecture Principle, to the end of creating thrifty, sober, and, above all, industrious citizens, looks even more ominous for any interpretation which seeks to present his intentions as facilitative, as empowering rather than disempowering, since the poor had committed no crime, and there would seem to be no parallel case for their control and rehabilitation.

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<sup>1</sup> See, for instance, E. Halevy, *The Growth of Philosophic Radicalism*, (trans. M. Morris), London, 1972; C. Bahmueller, *The National Charity Company: Jeremy Bentham's Silent Revolution*, Los Angeles, 1981; G. Himmelfarb, 'Jeremy Bentham's Haunted House', in *Victorian Minds*, New York, 1968, and 'Bentham's Utopia: The National Charity Company', *Journal of British Studies*, x (1970), pp. 80–125; and D. Long *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to his Utilitarianism*, Toronto, 1977.

Bentham does appear to glory in the scope which detention in a Poor Panopticon gives its governor to break down and recast entire personalities. He can plausibly be presented as anticipating Skinner's box, and filling it with, to use his own expression, 'that part of the national livestock which has no feathers to it and walks on two legs',<sup>3</sup> instead of rats. Ought we not then to suspect that, in Bahmueller's words, 'if the truth were known, we would soon suspect that it was not only the indigent that Bentham wanted to control, but *us* too, *all* of us. That is, we might suspect that Panopticon was a version of Benthamite society writ small'.<sup>4</sup> Indeed, is Bahmueller further correct to view the emerging apprentices of the Poor Panopticon, liberated after an entire lifetime of indoctrination, as the stormtroopers of a Benthamic blitzkrieg, as 'foot soldiers in a surreptitious guerilla war he hoped to wage against the entrenched mores of an unutilitarian society'?<sup>5</sup> When Bentham describes his poor house as a 'utopia', is the correct implication that drawn by both Bahmueller and Himmelfarb, that he believes that everyone would be much better off for a course in utilitarian conditioning?<sup>6</sup>

The revisionist response to these indictments is to call in evidence Bentham's mature constitutional theory, a theory that is rather less concerned with the insidious exercise of unseen power than with the supervision, control, and limitation of power, precisely by means of the exposure of its every exercise to the evaluation and censure of those over whom it is exercised.<sup>7</sup> The 'existential realisation of philosophic radicalism'<sup>8</sup> is indeed panoptic in a sense, it does indeed aim at transparency, but the

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<sup>2</sup> See J. Semple *Bentham's Prison: A study of the Panopticon Penitentiary*, Oxford, 1993, especially pp. 154–55 and 321–23, and 'Bentham and Foucault: A Defence of Panopticism', *Utilitas*, iv (1992), pp. 105–20.

<sup>3</sup> *The Works of Jeremy Bentham*, edited under the superintendence of John Bowring, 11 vols, Edinburgh, 1838–43, viii. p. 432n.

<sup>4</sup> Bahmueller, *The National Charity Company*, p. 110.

<sup>5</sup> *Ibid*, p. 185.

<sup>6</sup> For Bentham's description of the National Charity Company as an Utopia see Bowring viii. 430. For the assertion that it constitutes for Bentham an utopia because it resembles the idealization of utilitarian society, see Himmelfarb 'Bentham's Utopia: The National Charity Company', *passim*, and especially pp. 113–14, 125; and Bahmueller *The National Charity Company*, p. 206. In fact, the self-declared 'utopianism' of Bentham's plan clearly related to his proposition that he could make his workhouses profitable, and thereby reduce and ultimately eliminate the poor rates. At the time of his writing, received experience indicated strongly that relief in workhouses, far from being a financial panacea, had a tendency to be more expensive, in the medium term, than outdoor relief.

<sup>7</sup> See, in particular, F. Rosen, *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code*, Oxford, 1983, and *Bentham, Byron and Greece*, Oxford, 1992; T.P. Schofield, 'The Constitutional Code of Jeremy Bentham', *King's College Law Journal*, ii (1991–2), pp.40–6, and 'Bentham on Public Opinion and the Press', in D. Kingsford-Smith and D. Oliver, eds., *Economical with the Truth*, 1990.

<sup>8</sup> This expression is Himmelfarb's, see 'The Haunted House of Jeremy Bentham', p. 75.

behaviours which are to be made transparent are those of the holders and exercisers of coercive power, and the all-seeing eye is that of the public, the collectivity of individuals to whose welfare that power presents a standing threat.

What is the explanation of the undeniable tension between these two Bentham's? The explanation does not lie in the development of Bentham's thought, for the contrast between the self-definition of interests on the one hand, and the necessity of intervention deliberately to form and order the ends and interests of others, is present at the time of the poor law writings.<sup>9</sup>

In *A Defence of Usury*, Bentham observed of the poor man, in relation to his more affluent fellows, that he 'knows what is his interest as well as they do, and is as well disposed and able to pursue it as they are'.<sup>10</sup> This assertion appears flatly to contradict Bentham's frequent allusions in his poor law writings to the weakness and immaturity of the intellectual and moral faculties of the 'lower orders', which was such that: 'As objects of tenderness and beneficence they ought to be treated as children: but as beings whose ignorance, caprice and violence is a perpetual source of danger, [...] they ought to be guarded against as enemies'.<sup>11</sup> The tension between these two views will be the central concern of this paper.

Crudely, while the 'liberal' Bentham wishes to leave people alone, providing that they inflict no harm on others, because we are all better judges than others, and in particular than the state, of what is good for us, the 'paternalist' Bentham believes that it is in the interests of the poor to be reconstructed, to be instilled with interests and habits other than they currently possess.<sup>12</sup>

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<sup>9</sup> The first possible explanation is that he simply changed his mind, beginning as an authoritarian and ending a liberal. It is certainly true that Bentham's thought underwent development. It is also true that if there was a decade during which he thought and wrote some distinctly *un*Benthamic things, it was the 1790s. For instance, at University College London, Bentham Manuscripts (hereafter cited as UC) xlv. 1 is found a contents sheet for a putative work on the electoral system entitled: 'Rottenness no corruption', which dates from around 1795. At a subsequent date, Bentham has written on the sheet: 'What could this be? Surely this was never *my* opinion?'. However, Bentham never repudiated his published poor law writings, and as late as the final year of his life was planning to republish *An Outline of a work entitled Pauper Management Improved*. Is the answer simply that Bentham is glaringly inconsistent, so that there are indeed two Benthams, two theories, forming an incoherent whole? It is certainly no part of the aims of this paper to argue that Bentham was never inconsistent, or that tensions never arose within his thought, both as between work and work, and on occasion within a single work. It would in truth be surprising if a writer of Bentham's longevity and fecundity never fell into self-contradiction. Against this, the very fact that Bentham never repudiated his poor law writings does indicate that he at least saw no inconsistency between them and his democratic theory.

<sup>10</sup> *A Defence of Usury*, in Bowring, iii. 7, cited by Bahmueller, *The National Charity Company*, p. 147.

<sup>11</sup> UC cliia. 260 ('Fundamental Positions in regard to the making provision for the indigent poor').

<sup>12</sup> For the 'liberal' Bentham, see note 7 above, and also P. J. Kelly, *Utilitarianism and Distributive Justice*, Oxford, 1990; A. Dube, *The Theme of Acquisitiveness in Bentham's Political Thought*, New

In attempting some reconciliation between these two Bentham's, it will be suggested that he was well aware of the complex and interactive manner in which human beings come to a conception of themselves and their interests. Most basically, new human beings left alone to develop and pursue their own interests do not last long enough to self-define: they die of starvation, dehydration or hypothermia. Without interference, no one would survive long enough to develop any complex interests. The libertarian canard concerning the desirability of non-interference and the self-definition of interests would not have appealed to Bentham, he would have recognised in it an anarchical fallacy, the incoherence of which directs attention precisely to the conditions under which persons come to conceive of themselves and their interests, and brings in train, of necessity, discussion of their opportunities, of the range of external influences which bear upon them, and direct them toward becoming this rather than that.

With reference to the vast majority of the population, and specifically with reference to the independent poor, Bentham not only does not wish to reform their conception of interests directly, but endeavours to develop strategies which will facilitate their independence, that is, facilitate their pursuit of the interests which they have come to possess as a result of their enculturation in a particular family, within a particular complex pattern of social interaction.

However, in Bentham's view, a certain minority of the adult poor did have a misconceived notion of their interests to the extent of insanity, and such persons required, in their own interests, rehabilitation, to allow them to become normally functioning members of society.

Similarly, infants have a limited set of purely physiological interests, while their developed conception of interests depends, in large part, upon the influences brought to bear during the period of their development to maturity. In Bentham's view, the influences brought to bear during the development of the children of a significant proportion of the dependent poor are injurious to their capacity, as adults, to form, order and pursue ends. Accordingly, in so far as the National Charity Company stands in the relation of Guardian to such children, it has, not merely a right, but a duty, to

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York, 1991; and, with specific reference to the poor law writings, L. Campos Boralevi, *Bentham and the Oppressed*, Berlin and New York, 1984, pp. 96–119, and W. Roberts, 'Bentham's Poor Law proposals', *The Bentham Newsletter*, iii (1979), pp. 28–44.

promote characteristics which will enable the apprentice, as an adult, to maintain himself.

## II. 'Prevention is better than cure'

Despite his patronising generalisations concerning the capacities of the poor, Bentham is not guilty of asserting that indigence is necessarily the result of the personal failings of the indigent. As against critics such as Townsend and McFarlan,<sup>13</sup> he is clear that individuals possessed of the most unimpeachable habits of thrift, sobriety and industriousness can find themselves in a situation in which they face starvation through no fault or antecedent shortcoming of their own. True, Bentham does believe that unconditional relief gives an incentive to be idle:

Scarce any man will work, if he can obtain the same subsistence without working as he can by working: and many there are, who so long as they can obtain any subsistence at all without working, will decline working, how much so ever they might be able to increase their subsistence by it.<sup>14</sup>

Persons with an unimpeachable conception of their interests will rationally allow others to work in order that they should eat. Under Bentham's scheme, this option will be withdrawn, but its withdrawal is a testament to the prudential rationality of the relieved, not to their ignorance.

In enumerating the causes of indigence, in the 'Table of Cases Calling for Relief',<sup>15</sup> Bentham indicates that they may be internal or external to the individual. In terms of external causes, Bentham's identifies various contingencies which can plunge individuals and families into indigence. It is quite true that Bentham desires to mitigate, or if possible eliminate entirely the negative effects of these contingencies. However, this emphatically does not imply any will to control the preferences or

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<sup>13</sup> See J. Townsend, *A Dissertation on the poor laws, by a well-wisher to mankind*, London, 1786, pp. 6–18, and J. McFarlan, *Inquiries Concerning the Poor*, Edinburgh, 1782, p. 96.

<sup>14</sup> UC cliia. 232 ('Fundamental Positions in regard to the making provision for the indigent poor'). It is difficult to estimate how far Bentham believes the latter attitude to be prevalent, but he does estimate in 'Pauper Systems Compared' (UC cliib. 507) that half of the annual expenditure on poor relief is distributed to persons with no valid claim thereto.

<sup>15</sup> See Bowring, viii. facing page 361.

interests of individuals. Given that the threat of starvation arises when necessary expenditure exceeds available income, it is clear that a descent from self-maintenance to indigence can occur either by a fall in income or by a rise in expenditure, or by a combination of both.

Bentham's identification of the 'contingencies' capable of issuing in potentially catastrophic increase in expense or decline in income looks familiar, basically because the same set of contingencies is still recognised as issuing in the same problems. In terms of a straightforward reduction in income, Bentham identifies unemployment as the major external cause of indigence. He writes of 'the immense mass of private distress and public loss, continually generated, and constantly kept on foot, by the occasional want of work for hands, on whose part there is no want of inclination or ability to perform it'.<sup>16</sup> In terms of interests, the unemployed have both the knowledge that their continued subsistence depends upon the investment of labour, and the disposition to invest labour. They require work. One function of the National Charity Company is precisely to mimic the 'natural' relation between subsistence and labour: in the face of market failure, no one should be allowed to starve. The National Charity Company will relieve indigence on condition that labour is given in return. Bentham does not envisage able-bodied, ordinarily industrious men and women remaining long in his workhouse. They will constitute the 'coming and going stock', who resort to workhouse relief in bad times, and return to the labour market when demand picks up. One major reason for the failure of the market is simply lack of knowledge, or 'the want of a [...] cheap and accessible channel of appropriate intelligence, by which the serving hands that want employment and the Master-men [...] that want hands may be mutually informed of each other's wants—of the wants which they are mutually able and willing to relieve'.<sup>17</sup> Bentham proposes that each Industry House should serve as an Employment Intelligence Office, and that the Company, exploiting its access to national information, should produce an 'Employment Gazette', in which vacancies can be advertised. Bentham's concern here is with the prevention of indigence: the first use of such an institution, in his words, is 'To afford subsistence to the needy—subsistence upon the best terms, upon terms better than any upon which it would be possible for them to obtain it at an Industry House',<sup>18</sup> while 'the important part of the

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<sup>16</sup> UC clivb. 365.

<sup>17</sup> *Ibid.*

<sup>18</sup> UC clivb. 366.

benefit is that which falls to the share of the industrious, who without it would be necessitous'.<sup>19</sup>

The remaining contingencies which can plunge individuals and families into indigence are doubly threatening in so far as they tend to reduce income and to increase expenditure at one and the same time. For instance, illness both reduces the ability to earn income, and increases expenditure in as far as the patient is required to purchase medical assistance. Old age diminishes the capacity to labour and increases the chance of morbidity, and thereby of expense. Death too is expensive: the direct costs of burial are liable to place a considerable strain on a tight family budget; while if the corpus delicti in question belongs to the primary wage earner in the family, the consequence may be that several individuals face starvation in short order. The arrival of children constitutes a further double burden. On the one hand, disregarding the not inconsiderable risks to her life involved in delivery, the mother must cease productive labour for a period before and after childbirth. On the other, the expense of attendance by a midwife is authoritatively estimated to have come to five pounds.<sup>20</sup> Should the infant survive, it constitutes for the first years of its life a non-contributing drain on family resources. Following the researches of David Davies, Bentham asserts that the wages of agricultural labourers are simply insufficient to maintain more than two children.<sup>21</sup>

These 'contingencies' are, for Bentham, staid, widely experienced, statistically significant occurrences, which have bad consequences. His response is threefold. First, the size and the profitability of the National Charity Company allow it to offer medical assistance, natal care and burial to the independent poor, services free at the point of consumption, wherever the contingency occurs.<sup>22</sup> The point again is to keep the independent poor independent, not to enmesh them in the manipulative grasp of the utilitarian mind police.

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<sup>19</sup> UC clivb. 367.

<sup>20</sup> See D. Davies, *The Case of Labourers in Husbandry, Stated and Considered in Three Parts*, London and Bath, 1795, p. 16.

<sup>21</sup> UC cliia. 57 ('Fundamental Positions in regard to the making provision for the indigent poor').

<sup>22</sup> See 'Collateral uses of a system of Industry Houses', Section III, 'Uses Medical', in *Writings on Medicine and Poor Relief*, ed. M. Quinn, in *The Collected Works of Jeremy Bentham*, forthcoming.



Second, Bentham proposes accepting the surplus children of the independent poor as apprentices, bonded to the company until adulthood, and expects the poor to take advantage of this offer in significant numbers.<sup>23</sup>

Third, Bentham proposes a set of financial institutions, centred upon the Industry Houses, and aimed at making available secure deposit facilities and cheap credit, precisely to allow what little surplus is available to be stored against future contingency, and to allow present contingencies to be ridden out against the security of future, gradual, repayment.<sup>24</sup> Instead of blaming the poor for their indigence, Bentham tries to assist them in their own efforts to avoid it. Indeed, the sole purpose of ‘The Poor Man’s remittance bank’ is precisely to facilitate mutual aid, by making possible the transfer of small but possibly crucial funds from one part of the country to another, to allow persons connected by blood or friendship to help each other at times of crisis.<sup>25</sup> Bahmueller sees Bentham’s institutions of Poor man’s Bank, Poor man’s loan office and Friendly Society Bank as insidious, as undermining the not inconsiderable efforts of the poor to help themselves.<sup>26</sup> It is indeed the case that Bentham could hardly be expected to approve of institutions which typically met in public houses, but Bahmueller surely over interprets here. Was it the case that some Friendly Societies failed because they were too small, because their capital base was insufficient; and that others were the victims of corruption by their own officers? Bentham proposes to overcome both shortcomings, by having a comparatively massive capital to draw on, and by the publicity which attends the management of the Company. No, with regard to the situation of the independent poor, the evidence is

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<sup>23</sup> Bentham certainly prevaricated concerning the exact arrangements under which infants would arrive in the Poor Panopticon. On the one hand, he fully expected overburdened parents willingly to donate their surplus offspring to the company (UC cxxxiii. 95), and writes of the provision of collateral services without condition (UC cliia. 219, 247); on the other, he writes of the possibility of making the superior facilities for childbirth contained in the Panopticon freely available *on condition* that the children should automatically be bound to the company as apprentices, or of making it a condition of the relief of any parent with more than two economically inactive children over ten years of age, that one of the children be given up (UC cli. 290–1). As so often in his Poor law writings, the detailed conditions attached to the provision of services are left imprecise, to be tightened or relaxed according to the continuing capacity of the Company to make a profit, and thereby be in a position to provide any collateral services at all, and even more basically, to provide a guarantee of relief without threatening the security of property. Bluntly, the Company’s capacity to make profits depended straightforwardly on the supply of apprentices. To the extent that such a supply was relatively abundant, the range of collateral services offered to the independent poor could be maintained without conditions. To the extent that the supply of profitable apprentices dried up, Bentham’s view was that the interests of the Company and the general public coincided in demanding harsher and less humane conditions ‘in the event of [their] being found to answer in point of pecuniary profit’ (UC cli. 291).

<sup>24</sup> See ‘Collateral uses of a system of Industry Houses’, Section I: ‘Uses Pecuniary’.

<sup>25</sup> *Ibid.* (UC cliia. 94–7).

incontrovertible: Bentham wanted them outside the Panopticon poor house, and went out of his way to keep them there. As he put it himself, 'Preventing indigence is still better than relieving it'.<sup>27</sup>

### III. Knowing one's interests

If human beings do not spring Athena-like upon the world, fully equipped with portfolios of self-chosen interests, they must depend upon the guardianship of others to facilitate their acquisition. In *An Introduction to the Principles of Morals and Legislation (IPML)*, Bentham defines a guardian as 'one who is invested with power over another, living within the compass of the same family, and called a ward; the power being to be exercised for the benefit of the ward'.<sup>28</sup> After repeating the assertion that each agent must be the best judge of his or her own interests, Bentham considers whether this should render the institution of guardianship unnecessary. He ponders directly the question directly of who does not know their own interests:

If then there be a case where it can be for the advantage of one man to be under the power of another, it must be on account of some palpable and very considerable deficiency, on the part of the former, in point of intellects, or ( which is the same thing in other words) in point of knowledge or understanding. Now there are two cases in which such palpable deficiency is known to take place. These are, 1. Where a man's intellect is not yet arrived at that state in which it is capable of directing his own inclination in the pursuit of happiness. This is the case of *infancy*. 2. Where by some particular known or unknown circumstance his intellect has either never arrived at that state, or having arrived at it has fallen from it: which is the case of *insanity*.<sup>29</sup>

Unsurprisingly, the exceptions to the general rule that competent adults are the best judges of their own interests comprise those sections of the population who are not competent adults. With regard to these groups, what is the duty of the guardian, to what end does guardianship aim?

Of what nature is the course of conduct it prescribes? It is such a course of conduct as shall be best calculated for procuring to the ward the greatest quantity of

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<sup>26</sup> See Bahmueller, *The National Charity Company*, pp. 123–8, 148–9.

<sup>27</sup> UC cliia. 77 ('Collateral uses of a system of Industry Houses').

<sup>28</sup> *An Introduction to the Principles of Morals and Legislation (IPML)*, ed. J.H. Burns & H.L.A. Hart, London, 1970, (in *The Collected Works of Jeremy Bentham*), p. 244.

<sup>29</sup> *Ibid.*, pp. 244–5.

happiness which his faculties, and the circumstances he is in, will admit of[...] *This is, in fact, no other than that course of conduct which the ward, did he but know how, ought, in point of prudence, to maintain himself: so that the business of the former is to govern the latter precisely in the manner in which this latter ought to govern himself.*<sup>30</sup>

Bentham's interpretation of this course of conduct with reference to the infant population of the Industry Houses will be discussed in the following sections of this paper. In this section, the second category of persons in need of guardianship, the insane, will be discussed.

It is the case that some adults will have arrived at maturity equipped with conceptions of their interests which issue in their exposure to indigence. Chief among these are the plainly deluded. Beyond the quite obviously mentally disturbed however, there exist a further minority whose chosen manner life of inflicts pain on themselves. The alcoholic, for instance, commits an offence against himself. In general, Bentham sets his face against the punishment of such offences,<sup>31</sup> but the abuser of alcohol who exposes himself to indigence, and obliges the public to intervene to succour him, strips himself of his immunity. Bentham does believe that a minority of the poor are, to put the matter bluntly, not sufficiently responsible to be left alone:

In many instances an irresistible propensity to drunkenness, an irresistible propensity to debauchery, an utter incapacity of taking thought for the morrow, may like idiocy and other specie of insanity, of which they may be regarded as modifications, be considered as constitutional infirmities.<sup>32</sup>

When does a deleterious lifestyle become a clinical condition? No doubt there is a continuum along which persons range, but the crucial point is that, with the notable exception of successful beggars, such persons will self-select by falling prey to the danger of starvation. If I have developed a chaotic lifestyle which involves spending large amounts of money on the consumption of copious quantities of liquid poison, I may attract the contempt and opprobrium of my peers, but as long as I maintain

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<sup>30</sup> *Ibid.*, p. 246, emphasis added.

<sup>31</sup> *Ibid.*, pp. 277–8.

<sup>32</sup> UC cliia. 17 ('Fundamental positions in regard to the making provision for the Indigent Poor').

myself nevertheless, Bentham has no intention of obliging me to pop in for a course of rehabilitation. If my problem escalates to the extent that I am forced to apply for relief, I will be expected to work, and I will have no option but to remain sober.<sup>33</sup>

Bentham does appear frighteningly confident that my conception of my interests can be re-formed, and he does indeed fail to appreciate contemporary insights into the nature of problems of dependency, which indicate that the cognitive identification of myself as someone with a problem, offers the best prognosis for successful treatment. However, effective or not, the regime of the poor panopticon is emphatically not to be inflicted on the generality of the population. Some of the inmates of the poor panopticon *will* arrive there not because of any external contingency, such as illness or unemployment, but because they are simply not competent adults. Bentham's behaviourist psychology may be crude, but it does at least attempt to address the plight of such persons.

True, the regime of thrift, sobriety and hard labour will be inflicted on those who, as outlined above, are not suitable cases for treatment, who have fallen foul of the contingency of unemployment, or illness in the family, or of the death of the primary income earner, but Bentham neither expects the industrious and capable to stay long, nor does he think that a regime of labour and sobriety will do them any harm.

#### **IV. Acquiring Interests**

It is with regard to the conditions endured by the apprentice stock that the charge of authoritarianism is levelled against Bentham most centrally, and this focus ought not to be surprising. It is the labour of children which is to form the profit of the National Charity Company: indeed, it is in the putative transformation of the economic value of the child, from negative to positive, that the resources arise to relieve the relatively unproductive. It is the children who are to be indentured to service and productive

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<sup>33</sup> Compare on this issue J.S. Mill: 'So, again, idleness, except in a person receiving support from the public, [...] cannot without tyranny be made a subject of legal punishment; but if, either from idleness or any other avoidable cause, a man fails to perform his legal duties to others, as for instance to support his children, it is no tyranny to force him to fulfil that obligation, by compulsory labour, if no other means are available.', *On Liberty and other writings*, Cambridge, 1989, p. 98. Mill's general attitude to poor relief is strikingly Benthamic, as befits a supporter of the New Poor Law: see *The Collected Works of John Stuart Mill*, General Editor J.M. Robson, 33 vols., Toronto, 1981–91, ii. pp. 359–60, iii. pp. 960–2.

labour from the age of four until twenty-one. It is these ‘tabulae rasae on which this would-be Moses might etch the commandments to work and save’.<sup>34</sup> Once enclosed in Bentham’s Industry Houses, these children will be cloistered from the world of contingency outside, their expectations will be systematically formed, so that their wants are reduced, and the habituation to labour scored deep into their psyche.

It would be a gross error to argue that Bentham, in devising the apprentice regime was motivated solely, or even primarily, by considerations of maximising the effective range of life options open to the apprentices upon their liberation. The company is not only the guardian of the apprentices, it is also their master, and Bentham makes explicit analogy with the existing institution of apprenticeship, in arguing that the primary interests to be considered in such a relationship are the pecuniary interests of the master.<sup>35</sup> The most fundamental feature of the pauper child to Bentham, was the productive surplus to which its labour gave rise. While the exploitation of child labour is of itself, I trust, sufficient to make Bentham’s plan repellent to our wealthier age, it plays the crucial role for Bentham in the reconciliation of the values of subsistence and security. The indigent, all of them, could, at least at the end of the first twenty one years of the company’s operation, be secured against the threat of death by starvation, without any invasion of the security of property.

However, it would also be an error to deny that Bentham never considered the effect of the apprentice regime upon the interests of the apprentices themselves, not only in terms of moulding their personalities so that they possess the correct, utilitarian interests, but in equipping them with the knowledge, skills and resources to form and pursue their own interests. The National Charity Company ‘are not *Masters* only, but *Guardians* to the apprentice. To do anything with their eyes open to the prejudice of his lasting welfare, more especially for their own emolument, would be a breach of trust’.<sup>36</sup>

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<sup>34</sup> See Bahmueller, *The National Charity Company*, p. 177.

<sup>35</sup> See UC cliiia. 71 (‘Fundamental Positions in regard to the making provision for the indigent poor’): ‘From the labour of a *Minor*, brought up and educated at the public charge, the public may, without injustice, hardship, or even deviation from established law or usage, reap the utmost profit that such labour can be made to yield, consistently with the regard due [...] to the health and permanent welfare of the individual [...]: to wit, in the same manner as a Master reaps the utmost profit that can be reaped from the labour of his apprentice’.

<sup>36</sup> UC cli. 318.

Bentham himself sees both benefit to the community, and benefit to the apprentice, as valuable:

Were the institution to promise no advantage to the individual, it would be worth adopting, on account of the advantage it promises to the public, in point of Economy. Were the institution to promise no advantage in point of economy to the public, it would be worth adopting, on account of the advantage it promises to the individual.<sup>37</sup>

As argued above, any discussion of the extent to which adult human individuals are the best judges of their own interests can not simply be extended to the case of children. New born human agents do not typically possess developed plans of life, and complex interests, but only the potentiality for them.

It really is necessary to enquire into the options facing the children of the indigent poor at the time of Bentham's writing. To begin with, the alternatives are not education to the end of becoming a utilitarian clone, versus spontaneous development into a free, self-chosen, autonomous being. It is disingenuous in the extreme to berate Bentham as a corrupter of young minds which otherwise would have flowered with their own particular genius. The expectation current in our culture, as in Bentham's, was that the primary source of formative influence would be exercised by the parents of the children in question. It is further disingenuous to assume that parental influence is inevitably benign, whereas non-parental influence is not. As Bentham puts it:

It were to be wished that all children were a comfort to their parents, therefore all are—it were to be wished that the home-bred children of the self-maintaining poor were happy, therefore they all are—it were to be wished that all home-bred children of the self-maintaining poor were well-bred—therefore they all are—all this is not very uncommon logic, but it is very bad logic, and, were it suffered to set the law to practice, would be very pernicious in its effects. Drawing a picture of felicity and innocence and laying the scene in a cottage, will not augment in the smallest degree the quantity of either in any cottage whatsoever: on the

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<sup>37</sup> UC cliib. 265.

contrary it would diminish the quantity of both throughout the kingdom [...] . Comfort without sufficiency, morality without discipline and instruction, are effects without a cause.<sup>38</sup>

In regard to the children of the nearly indigent, Bentham may indeed have a jaundiced view of the capacities of certain poor parents as providers and educators. However, although his position on the subject *is* ambiguous and inconsistent, Bentham does not envisage a mass tearing of children from their parents by main force:

Happy or unhappy, innocent or profligate, children can not be taken from their parents (extraordinary cases such as those of criminality and insanity excepted) to be put into an Industry House, though it had an angel for its governor, against the consent of those natural guardians without such a stretch of power as would be destructive of all security: but where not only the consent but the petition of the parents is rendered an indispensable condition of the transfer [...] it seems difficult to say on what ground it can be considered as other than a desirable one.<sup>39</sup>

Bentham expects parents to consent to the indenture of their children, since all parties, parents, children, Industry House, and public, will benefit from the process. On the one hand the labouring family will be relieved expense and enabled to maintain its independence; on the other, the child will receive benefits not available at home.

It is Bentham's view that the formative influence exercised by a least a significant proportion of poor parents is prejudicial to the interests of their children both directly and indirectly. Directly, the fact that one's parents may not be in position to afford medical assistance at one's birth, or to secure sufficient food to keep one alive, is liable to prejudice one's chances of surviving long enough to develop any complex interest whatsoever, or with Bentham, 'no child will ever live happily after it is dead'.<sup>40</sup> Indirectly, it is Bentham's conviction that learning, from one's parents or one's peers, the shortest way to the gin shop and the most rewarding methods of petty

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<sup>38</sup> UC cxxxiii. 96.

<sup>39</sup> UC cxxxiii. 97.

<sup>40</sup> UC cli. 137.

crime, is unlikely to provide one with a secure foundation for the formation and pursuit of interests in adult life:

Pictures of cottage felicity and cottage virtues are drawn from some of the best moments of some extraordinarily well-inhabited and ordered cottage. But, even in the best ordered cottage, it seems difficult to say from what causes a degree either of comfort or good behaviour is to be produced equal to what may, to a certainty, sooner or later be rendered universal in an Inspection Industry House: and it is certain that no such desirable results can be produced from the mixture of penury and profusion—of idleness and over-hard labour—of anarchy and tyranny which compose a scene much more frequent than that which is taken for the subject of such pictures.<sup>41</sup>

Once the fallacious assumption of unmediated autonomy is discarded, the conditions under which persons develop conceptions of themselves, and begin to form and order their ends becomes *the* crucial focus for any theory which wishes to foster the individual pursuit of individual interests.

It is incontrovertibly true that Bentham is confident of the ability of the Industry House to instill the values of thrift, sobriety and unremitting labour. It is further true that, to contemporary readers, his proposals sound not only exploitative of his apprentices, but abhorrent, in so far as he plans to transform them into unreflectively productive cogs in the bourgeois order. However, this indictment would surely prompt from Bentham a prosaic, and consciously uninspiring response. Assuming that formative influence will be exercised, and that external conditions during development will have an effect in determining adult persons to develop this habit rather than that, what values and character traits ought the agents of influence aspire to encourage? What sort of capacities are likely to enhance the agent's option set? If not industry and sobriety, perhaps lassitude and bibulousness? Subversive of system it is not, but given Bentham's assumption that the prevailing economic order is here to stay, that the connection between the investment of labour and the consumption of necessities, never mind superfluities, is the first lesson of human existence, and that

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<sup>41</sup> UC cxxxiii. 97.



the erosion of that connection, or any organised attempt at its overthrow, would result in generalised starvation, it does behove the romantic critic of bourgeois rationality to address, when we all sober up from our system exploding celebration of individual spontaneity, the problem of generating sufficient food to feed ourselves, together with a social surplus sufficient to cover the shortfalls visited upon us by the accidents of nature, and by the assemblage of those days when we decide we would rather stay in bed.

Bentham was well aware of the interaction between the developing agent and the circumstances in which he or she developed, and of its consequences for the character of the finished individual. In *IPML*, albeit in discussion of circumstances influencing sensibility to punishment, he speaks of twenty four primary circumstances, beginning with health and strength, and including bent of inclination, moral biases, habitual occupations and pecuniary circumstances.<sup>42</sup> The most extensively influential secondary circumstance, which has effects on almost the entire range of primary circumstances, is education:

By education then nothing more can be expressed than the condition a man is in respect of those primary circumstances, as resulting partly from the management and contrivance of others, principally those who in the early periods of his life have dominion over him, partly from his own. To the physical part of his education, belong the circumstances of health strength, and hardiness. [...] To the intellectual part, those of quantity and quality of knowledge, and in some measure perhaps those of firmness of mind and steadiness. To the moral part, the bent of his inclinations, the quantity and quality of moral, religious, sympathetic and antipathetic sensibility: to all three branches indiscriminately, but under the superior control of external occurrences, his habitual recreations, his property, his means of livelihood, his connexions in the way of profit and of burthen, and his habits of expense.<sup>43</sup>

The influence of education is thus massively broad. In his poor law writings Bentham has it that ‘the whole time of an individual is comprised within the field of

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<sup>42</sup> See *IPML*, pp. 53–62.

education'.<sup>44</sup> The end of education is the increased happiness of the individual, which is broken down into seven subordinate ends thus: subsistence, health, strength, intellectual improvement, comfort (including amusement in all its shapes and under all its denominations), security and devotion.<sup>45</sup> In fostering these ends amongst its charges, Bentham asserts that the regime of the National Charity Company will 'institute[...] a great system of national education [...] [and] substitute garden culture to barrenness or weeds'.<sup>46</sup> Indeed practically all of Bentham's strictures regarding the immaturity of the poor are immediately qualified by statements to the effect that that immaturity is a direct consequence of the want of education.<sup>47</sup>

The children are to be taught to read in tandem with the development of their capacity to speak: 'In point of natural capacity, children are capable of learning their letters a considerable time before they can speak—Learning to speak and learning to read may therefore keep pace with one another'.<sup>48</sup> It is true, as both Himmelfarb and Bahmueller point out, that the period exclusively dedicated to education, independently of labour, ends, in Bentham's view at the age of four, after which it is confined to Sundays.<sup>49</sup> However, this still represents an advance on the education available to poor children at the time of Bentham's writing, and it does pre-date the compulsory primary education of children in this country by over seventy years. Bahmueller admits that under Bentham's proposals 'at long last pauper children would receive at least a modicum of systematic education'.<sup>50</sup>

In fact, Bentham's major motive for extending non-laborious education until four years of age, is that no useful labour can be extracted from toddlers. There are two reasons for wishing to unite labour with learning. In the first place, the whole system of relief depends, for Bentham, upon the profitability of the company; productive labour unrealised is money lost. In the second place, with regard to the interest of the individual in question, 'what is of real use [is] an acquaintance with the realities which surround us'.<sup>51</sup> Amongst the ends of education, subsistence comes first,

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<sup>43</sup> *Ibid.*, p. 66.

<sup>44</sup> UC cxlix. 88.

<sup>45</sup> *Ibid.*

<sup>46</sup> UC cli. 284.

<sup>47</sup> See, for instance, UC cliiia. 109, 168; cli. 4; cliib. 389; cliib. 263.

<sup>48</sup> UC cxlix. 109.

<sup>49</sup> See Bahmueller, *The National Charity Company*, p. 167; Himmelfarb, 'Bentham's Utopia', p. 106.

<sup>50</sup> Bahmueller, *The National Charity Company*, p. 11.

<sup>51</sup> UC cxlix. 71.

and the condition of subsistence is labour. The prime fact which Bentham's apprentices are to recognise is indeed that:

Productive labour, being therefore necessary to the preservation of the species, nor any individual capable of being relieved from it but by its being shifted off upon another, this occupation takes precedence in the order of importance of all others [...] strength and even health itself not excepted. All might live though none were to be in health: but none would live if labour were to cease.<sup>52</sup>

The consequences of this prioritisation are twofold. On the one hand, even in the purely theoretical part of Bentham's syllabus, the knowledge he wishes to impart is practical, it is oriented to the facilitation of subsistence. The apprentices will learn arithmetic and chemistry, as they apply to agriculture and husbandry; mechanics and land surveying, as they apply to the same end. The focus of the learning is, without exception, its practical application. For instance, while the apprentices are to be taught mathematical formulas to assist them in the practical tasks which they might face, they are not to bother with proofs, since 'in the propositions is contained all that is generally useful; in the demonstrations, all that is difficult'.<sup>53</sup> And again:

By a very easy process, a child, even a very young one, might be made to comprehend as a matter of fact, that spheres are to each other as the cubes of their diameters: a proposition of no small use in the choice of apples and oranges. But the demonstration! I never yet met with a motive strong enough to engage me to submit to the fatigue of comprehending it.<sup>54</sup>

The apprentices are to learn technical skills, that is, the sort of skills that they will find useful on liberation.

In the second place, to invest labour is to learn to labour, and the readiness to invest labour, which is the product of such an experience, is the best guarantee the

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<sup>52</sup> UC cxlix. 88.

<sup>53</sup> UC cxlix. 74.

<sup>54</sup> *Ibid.*

apprentice can have for future health, strength, security and even comfort, since ‘all those other objects being duly provided for, comfort, in no inconsiderable degree, comes of course’.<sup>55</sup>

Since the apprentices will one day rely on their labour to maintain their independence, it is advisable that they should be capable of turning their hand to a variety of tasks. Hence the importance of the employment mixing principle, which directs that ‘in particular with regard to non-adults, taken in for education as well as maintenance, care be taken that in the instance of each individual, the list of employments put into his hands shall be sufficiently adapted, as well in quality as in number, to every fluctuation which the demand in relation to the produce of labour seems exposed’.<sup>56</sup> Once more, the Company itself will benefit from the versatility of its workforce, but the effect of increasing the likelihood that the apprentice will gain employment on his liberation, and thereafter maintain himself in independence, ought not to be ignored. Bentham is explicit: ‘This head of advantage is of more particular importance with regard to the individual, on account of the facilities it affords him for gaining or regaining a state of independence. To adults it affords the means of returning to the world, to non-adults the means of coming in to it, with advantage’.<sup>57</sup>

None of this is to deny that the community will derive benefits from the intensive labour of the pauper apprentices, but it is to assert that, rather than remaking them according to his own preference, Bentham is at pains to facilitate their eventual independence, to give them the skills and habits which can not but enhance their abilities to live their lives in accordance with their own ends.

There is no more rebarbative aspect of Bentham’s plans for the pauper apprentices, nor one that has incurred more criticism, than the manner in which he proposes to increase their comfort and happiness by depressing their expectations in a systematic exercise in behavioural conditioning, cloistered from the corruptive influence of the outside world, according to the simple principle, that what they have never had they will never miss:

[...] so long as necessities are not wanting, expence is productive of enjoyment—not in proportion to its absolute quantum—but in

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<sup>55</sup> UC cxlix. 90.

<sup>56</sup> UC clivb. 309–10.

<sup>57</sup> UC clivb. 316.

proportion to its relative quantum—in proportion to the ratio it bears to the demand that results from experiences, habits and expectations. The luxury of the workman at large will be as much unknown to the Company's wards, as the luxury of the Peer is to the labourer at large.<sup>58</sup>

It is true, as Bahmueller asserts, that Bentham delights in developing this insight:<sup>59</sup> the apprentices will be protected from alcohol, from the binge inducing oscillation between periods of high wages and periods of unemployment, and from the perverse preference of the poor in the south of England, that is to say, of their parents, for consuming wheaten bread:

He who, finding a people in the habit of feeding on corn, engages them to feed on Potatoes, does as much for them as if he doubled or trebled their wages. He who, finding a people in the habit of feeding on Potatoes, engages them to leave their Potatoes and take to corn, does as much as if [he] struck off from their wages.<sup>60</sup>

Bentham might in truth have added, that feeding your apprentices potatoes reduces your overheads and boosts your profits.

It is further true that deliberately depressing expectations by the exercise of plastic power would appear to be a paradoxical way in which to enhance choice. In terms of the formation of expectations on the part of the apprentices, Bentham does indeed embark upon a direct programme of control. He appears both to overestimate the plasticity of his material, and to underestimate the difficulties they are likely to face upon liberation, when they return to a social group which fails to share their reductionist view of human need. Despite the fact that he envisages a degree of moral education specifically targeted at the apprentice in the pre-liberation period, with reference to 'the nature and the mischief of the several sorts of pernicious practices, which he will have been so little exposed either to fall into or to be a sufferer by,

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<sup>58</sup> UC cli. 335.

<sup>59</sup> See Bahmueller, *The National Charity Company*, p. 178: 'Because the young were blank sheets awaiting the author of the Book of Life (the legislator) to write upon them, no fears should linger that what might seem a life of harsh privation and toil would be painful: they had no expectations. Such was Bentham's argument, and he repeated it mercilessly.'

<sup>60</sup> UC clivb. 525.

during his continuance in these seats of tranquillity and innocence’,<sup>61</sup> Bahmueller is surely correct to fear that these Benthamic ingenués are liable to fall off the strait and narrow once allowed, for the first time in their lives, the freedom to make foolish, self-destructive or dangerous choices.<sup>62</sup>

On the other hand, anyone who has heard a modern child express its preference for the possession of the latest computer game in the language of basic needs, would be hard put to disagree with Bentham that ‘before the maturation of the intellectual faculties, compulsion, for the benefit of the party compelled, is indispensable’.<sup>63</sup> Again, formative influence requires to be exercised, but Bentham does often appear to assume that, with regard to the pauper children at least, the process is all one way.<sup>64</sup>

However, Bentham’s commitment to the instilling of economical habits in the apprentices, is directly derived from the manner in which the equation between subsistence and indigence depends upon the balance between income and expenditure. Successful solutions to this equation involve either the raising of wages, or the reduction in expenditure, or as Bentham puts it, ‘affluence is equally promoted by the encrease of means and by the diminution of wants’.<sup>65</sup> By fostering the industrious habits of the apprentices, and by supplying them with a portfolio of transferable skills, he does believe that he can enhance their incomes. By keeping them out of the labour market until the age of twenty one, he does believe that he can raise the wages of the independent poor in agriculture. He does emphatically believe that the expenditure of

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<sup>61</sup> UC cxlix. 73.

<sup>62</sup> See Bahmueller, *The National Charity Company*, p. 212.

<sup>63</sup> UC cliva. 224.

<sup>64</sup> The extent to which Bentham believed that habituation could change attitudes is unclear. It is true that in the poor law writings Bentham asserts confidently that he can determine effectively the manner in which his apprentices conceive of themselves and their society. However, at least in 1791, Bentham regarded the fantasy of unlimited plastic power as to be taken with a large pinch of salt:

Party men, controversialists of every description, and all other such epicures, whose mouth waters at the mammon of power, might here give themselves a rich treat, adapted to their several tastes, unembittered by contradiction. Two and two might here be less than four, or the moon might be made of green cheese; if any pious founder, who were rich enough, chose to have her of that material. (Bowring, iv. p. 65)

Indeed, Bentham describes the notorious ‘Panopticon Letter’ on Schools, which waxes positively lyrical over the malleability of human minds as: ‘a sort of *jeu d’esprit*, which could hardly have presented itself in so light a form, at any other period than at the moment of conception, and under the flow of spirits which the charms of novelty are apt to inspire. As such, it may possibly help to alleviate the tedium of a dry discussion, and on that score obtain the pardon, should it fail of receiving the approbation, of the graver class of readers.’ (Ibid. 40). Perhaps the most plausible explanation of this inconsistency is to be found in the nature of the intended audience for the Poor law writings. Anyone who could promise to deliver docile, industrious and unreflectively loyal lower orders in 1797, could only enhance the attractiveness of their scheme to the nervous ratepayers, and to the government.

the poor can be retrenched, and that only the habit of consuming luxuries prevents its retrenchment. In this conviction, and in the identification of tea, butter and white bread as luxuries, he echoes the views of a variety of eighteenth century commentators, from Josiah Tucker to Henry Fielding to Arthur Young.<sup>66</sup> The difference concerns the move from exhortation and criticism to direct control. Once habits are formed, it is too late: 'Habit tyrannizes the peasant not less than the prince. What a man has been used to he must continue to have, or he is unhappy'.<sup>67</sup>

Were it possible, it might be preferable for the children of the nearly indigent to be encouraged to broaden rather than to constrict the horizons of their expectations in regard to consumption. No such broadening can be either possible or desirable, for Bentham, in a crisis which sees an eighth of the population on relief. To encourage, as far as possible, habits of frugality, will allow the apprentices to maintain themselves and their families. If, for Bentham, the options faced by the indigent are immediate starvation, in the face of the abolition of relief, or starvation in the medium term, in the face of the severance of the bond between labour and subsistence, which follows from unconditional relief, and the consequent dissemination of the expectation that in our idleness we will be fed, any strategy which secures to persons an increased chance of maintaining themselves and their families may be interpreted as increasing their options from zero to more than zero. Most basically, dead persons have no options, and Bentham does believe that the consumption expectations of the indigent do contribute to the possibility that they will not have sufficient to eat.

In terms of Bahmueller's charge that the liberated apprentices are intended to form Bentham's fifth column in the wider society, it is true that Bentham hopes that their examples, both of industriousness and frugality will be emulated: 'the stock thus poured into the community at large will be inured to the habits of frugality, and will inculcate it by example'.<sup>68</sup> However, admitting that Bentham is guilty of glorying in the exercise of plastic power, what is it that Bahmueller would have him do? Formative influence, though undoubtedly less an exercise in behavioural conditioning

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<sup>65</sup> UC clivb. 531.

<sup>66</sup> See, for instance, J. Tucker, *A Brief Essay [...] on Trade*, 3rd edn, London, 1753, pp. 351–2, and H. Fielding, *An Inquiry [...] into the Increase of Robbers*, London, 1751, p. xi. Arthur Young's terminology directly anticipates Bentham's: 'It may be said, that wheaten-bread, that beef, that mutton, that sugar, that butter are dear; but do not in the height of an argument, jumble these and *the necessaries* of life together.', *The Farmer's Letters*, London, 1768, p. 202.

<sup>67</sup> UC clivb. 531.

<sup>68</sup> *Ibid.*

than Bentham believes it to be, *is* formative influence. Bentham does wish to inculcate the value of thrift, he does believe not only that his apprentices will be in a better position to maintain themselves, but that, as husbands and fathers, they will not allow a situation to develop in which, as is 'too often the case, the wife and children are left in a state of indigence at home, while the husband is enjoying his accustomed gratifications at the Alehouse'.<sup>69</sup>

## V. Two Unresolved Problems

Even if Bentham can be understood to be committed to the enhancement of the opportunities of his apprentices, two considerable problems loom. The first concerns the empowerment of the liberated apprentices vis a vis their contemporaries who have not shared their education or their habituation. The second concerns the manner in which Bentham endorses the limitation of the expectations of the poor, vis a vis the rich.

Is it not the case that, assuming they withstand their first whiff of the barmaid's apron, Bentham's literate, industrious and frugal apprentices will be both more productive and cheaper to employ than their peers, and does this not imply that they will displace those peers, and drive them into indigence? Bentham is aware of the problem, but fails properly to address it. He does indicate that: 'In the education of children maintained in this manner at the public expence, it should not be an object of endeavour to enable them, or any of them, to acquire a superiority in any respect in relation to children maintained at the expence of their parents'.<sup>70</sup> However, in respect of literacy, numeracy, frugality, industry and the possession of a comparatively broad range of skills, it seems undeniable that the graduates of the Benthamic Industry House will be enabled to acquire exactly such a superiority. Is Bahmueller then correct in discerning Bentham's hidden agenda, which involves the serial elimination of sloth, as his frighteningly efficient apprentices simply swap places with the children of hitherto independent parents who cannot stand the competition? It seems more likely that Bentham's proposals contain a contradiction which he has simply failed to resolve. As the exerciser of direct formative influence, as the guardian of its apprentices, it behoves the Company to equip its charges with the knowledge and

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<sup>69</sup> UC clivb. 529–30.



skills necessary to their adult lives. The company can afford to impart literacy and numeracy because it benefits from economies of scale and makes a pecuniary profit. Any attempt to make these goods available to the children of the poor generally would be expensive, and would therefore require the invasion of the security of property, by the imposition of taxes on the propertied, at levels which Bentham believed to be simply incompatible with the maintenance of a settled social order. He simply fails to resolve the difficulty which arises from the enhancement of the opportunities of the apprentices, in terms of the relative devaluation of the abilities of the children of the independent poor. Despite his repeated insistence that *the* basic problem is lack of education, no general programme of education can, for Bentham, be envisaged, without endangering the primary value of security.

In the second place, while it is arguable that the regime of education and labour contained in the Industry House can be interpreted broadly as adding to the opportunities available to the apprentices on liberation, it does remain emphatically the case that their education, and the opportunities which that education may bring in train, will remain those typical of agricultural day labourers. Bentham does unapologetically distinguish between the sensitivities and expectations of the poor and the rich, and he does dismiss the possibility of utilising any system of education directly to reduce the gap between them. Thus, whilst the apprentices will learn to read and write, they will not be taught grammar, since

[...] the ordinary use of grammar is to preserve propriety of speech,; i.e. that mode of speech which is habitual to and characteristic of the superior classes: the use of propriety of speech is to cause the speaker to be considered as belonging to those superior classes: the use of this branch of instruction is therefore subservient to *the faculty of pleasing* with reference to these classes, by saving a man from being regarded among them as unfit for their society.<sup>71</sup>

While Bentham does wish to enhance the opportunities of the apprentices, the opportunities which the regime of the Industry House is designed to advance are those appropriate to a particular social group. Rich and poor develop, of necessity, different

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<sup>70</sup> UC cliia. 253 ('Fundamental Positions in regard to the making provision for the Indigent Poor').

expectations, thus it is that, ‘in the situation of the affluent and self-monitoring classes of the non-adults, labour may be and is dispensed with’,<sup>72</sup> it is neither a habit nor a skill which they require. In the enumeration of the circumstances influencing sensibility in *IPML*, a person’s rank is held to ‘induce or indicate a difference’ in, amongst other circumstances, their quantity and quality of knowledge, their habitual occupations, the nature and productivity of their livelihood, and their connexions importing profit or burthens of expense.<sup>73</sup> Such is the situation in which Bentham writes, and Bentham asserts its historical inevitability, while at the same time rejecting its basis in natural endowment:

In the world at large the inconveniences dependent on the unavoidable dominion of the rich over the poor are tempered at least, if not outweighed, by the advantages that are attendant on them: for the dominion of the rich over the poor is the dominion of mind over matter, *the dominion of those who have had the means of acquiring moral and intellectual endowments over those who have had no such means.*<sup>74</sup>

Bentham follows Smith in recognising that economic inequalities are traceable much more to upbringing and circumstance, that is to say, opportunities, than to native differences in intelligence or talent.<sup>75</sup> Whilst there are of course available utilitarian arguments for inequality of distribution, and inequality of inheritable social position, rank, and opportunities which go with them, there is a problem here for interpretations which view Bentham as having a serious commitment to equality.

Once the influence of the origin and socialisation of persons in a particular social position, together with the expectations which go with that social position, on that agent’s life chances, is admitted, the egalitarian is driven in the direction of equalising those conditions, and those typical expectations.

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<sup>71</sup> UC cxlix. 70.

<sup>72</sup> UC cxlix. 88.

<sup>73</sup> See *IPML*, pp. 65–6.

<sup>74</sup> UC cliib. 263, emphasis added.

<sup>75</sup> See A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R.H.Campbell, A.S. Skinner and W.B. Todd, 2 vols., Oxford, 1976, i. pp. 28–9: ‘The difference between the most dissimilar characters, between a philosopher and a common street porter, for example, seems to arise not so much from nature, as from habit, custom and education.’

As indicated above, Bentham's poor law writings are the site of a head on clash between the values of security and subsistence. For Kelly, Bentham's formal principle of justice, the security providing principle, commits the legislator to having, as a goal of legislation, progress towards the equal distribution of the conditions of interest formation and pursuit.<sup>76</sup> To import an anachronistic expression from the work of Rawls, once the question of inequality of developmental condition arises, that is to say, once the anarchical fallacy of non-interference is dropped, individuals have to perform a 'highest order interest in how all their other interests, even their fundamental ones, are shaped and regulated by social institutions'.<sup>77</sup>

Paradoxically, the group in regard to which Bentham does seek to secure improved conditions of interest formation are the indigent poor, and he believes himself able so to do because the apprentices pay, and more than pay, for the expenditure involved. Any project by Bentham to advocate any broader based policy which could come under the rubric of 'opportunity', is debarred from consideration simply by its expense, and the necessity to raise public revenues in order to meet that expense. The security providing principle contains a central contradiction. Negative rights to forbearance, and crucially the right to enjoy the fruits of one's labour unmolested, conflict directly with the goal of equality in the distribution of the conditions of interest formation. The bankruptcy of the fallacy of non-interference indicates precisely that the formal distribution of equal rights to appropriation signally fails to insure the neutrality between individual conceptions of interest which is held to be at the centre of Bentham's theory of justice.

Indeed, Bentham seeks to facilitate the formation and pursuit of interests by the indigent in so far as the interests they may come to espouse can be understood as representative of typically poor people. His position appears to be that any strategy which aims directly at equality, of opportunity as much as of property, must entail an attack on security which will in turn, in short order, destroy the system of social interaction on which all interests, both those of the rich and those of the poor depend.<sup>78</sup> He can address impediments to the formation and pursuit of interests by the independent poor, in terms of the unpredictable and prohibitive costs of medical

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<sup>76</sup> See Kelly, *Utilitarianism and Distributive Justice*, p. 182: 'The ultimate aim of Bentham's theory of justice was to secure a pattern of expectations that embodied the equal provision of the material and formal conditions of interest realization and this necessarily entails the progressive equalization of property holdings.'

<sup>77</sup> See J. Rawls, 'Fairness to Goodness', *Philosophical Review*, lxxxiv (1975), p. 553.

treatment, because, thanks to the productivity of the apprentices, he is confident that it can be done without assaulting property. Whilst deriving his practical principles from very different premises, Bentham's effective stance on justice, in all but the most extreme circumstances, resembles that of Nozick, even down to the identification of taxation with forced labour.<sup>79</sup>

It is precisely in squaring the circle of indigence, in collecting child labour in a profit making manufactory, that Bentham can enhance the opportunities of his apprentices with relative impunity. No one has to be taxed to give the pauper children the 'best start' in life, because they more than pay for their own maintenance. Indeed, Bentham's unresolved worry is that they are preferentially treated, that their opportunities are unfairly expanded vis a vis their independent fellows. The rejection of the fallacy of non-interference obliges Bentham to investigate the broad field of opportunities, but his conviction of the overriding importance of the security of private property places any conception of equality of opportunity beyond him.

Bentham's determination to avoid the invasion of the rights of private property may be influenced by two further, somewhat contradictory perceptions. In the first place, Bentham is not sanguine regarding the outlook for any massive growth in social surplus which can become available for redistribution. The nearly indigent will always be with us: 'In the highest state of social prosperity, the great mass of the citizens will most probably possess few other resources than their daily labour, and consequently, will always be near to indigence'.<sup>80</sup>

With the benefit of hindsight, it does appear that Bentham was unduly pessimistic. Decades of burgeoning public spending, a considerable portion of it on public education, public health and public housing, have not seen the sky fall or the incentive to labour eradicated. A more affluent society can build upon Bentham's

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<sup>78</sup> See Rosen, *Jeremy Bentham and Representative Democracy*, especially pp. 222–8.

<sup>79</sup> See R. Nozick, *Anarchy, State and Utopia*, Oxford, 1974, p. 169; and compare UC cliia. 232: 'For the expence of relief thus to be administered by Government there is no other source of supply but what is produced by taxes: i.e. by labour, or the produce of labour, extracted by force'; and UC cliib. 539: 'Justice, which requires that of two members of the community, equally innocent and equally deserving, not connected by any domestic tie, one shall not be compelled to part with the fruits of his own labour, without absolute necessity, for the benefit of another.' Of course, Bentham is not Nozick, but the thrust of his thought on subsistence, as Kelly points out, is strikingly reminiscent of that of F.A. Hayek: see *Law, Legislation and Liberty*, 3 vols., London, 1973–9, iii. p. 55, discussed by Kelly, *Utilitarianism and Distributive Justice*, p. 115n.

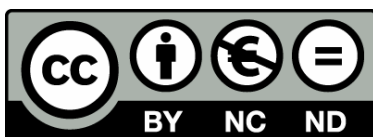
<sup>80</sup> See *Principles of the Civil Code* (Bowring, i. 299–364), p. 314. Of course, this and the next two quotations come from a translation of Dumont's recension of Bentham, and are thus twice removed from the horse's mouth. Frustratingly, whilst the Poor Law writings deal directly with the matter of subsistence, and its relation to security and to abundance, equality receives no direct attention.

rejection of the libertarian fallacy without assuming that the only group whose opportunities can be enhanced are children in immediate danger of starvation, who have to labour for up to sixteen hours a day, and subsist on potatoes, in order to finance not only their own education, and the provision of a raft of welfare services to other poor people.

In the second, for Bentham, equipping the indigent with the habits of industry and frugality is actually one acceptable way to promote equality:

This will be the result of the different habits formed by opulence and poverty. The first, prodigal and vain, seeks only to enjoy without creating: the second, accustomed to obscurity and to privations, finds its pleasures in its labours and in its economy.<sup>81</sup>

Given the twin spurs of industry and economy, and given the removal of monopolies, and other restraints on trade, which warp the operation of economic exchange between individuals who do not differ hugely in natural capacity, the distribution of incomes, and thereby of developmental environments, will reduce of itself: ‘We may observe, that in a nation which prospers by agriculture, manufactures and commerce, there is a continual progress towards equality’.<sup>82</sup> If Bentham is unduly pessimistic concerning the resilience of security in the face of redistributive taxation, he is, to say the very least, more sanguine concerning the tendency of inequalities to fade slowly away without the need for legislative interference to challenge them directly.



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<sup>81</sup> *Ibid.*, 313.

<sup>82</sup> *Ibid.*